

EXHIBIT "A"

40.440 HABITAT CONSERVATION

40.440.010 INTRODUCTION

A. Purpose.

The purpose of this chapter is to protect environmentally distinct, fragile and valuable fish and wildlife habitat areas, as defined in Section 40.440.010(C) for present and future generations, while also allowing for reasonable use of private property. This chapter intends to conserve the functional integrity of the habitats needed to perpetually support fish and wildlife populations.

1. These purposes are to be carried out by reviewing impacts of proposed activities within designated habitat areas, and through the development of education, outreach and incentive programs. Review under this chapter shall be based on best available science and the mandates of the Washington Growth Management Act, and shall include consultation with the Washington Department of Fish and Wildlife (WDFW). The county shall emphasize education and voluntary conservation options prior to regulatory enforcement.
2. Within areas designated by this chapter, development or clearing activities which degrade habitat should generally be avoided where possible. However, activities listed as exempt in this chapter can be undertaken in habitat areas without additional review. Activities not listed as exempt can be undertaken following county review if they do not substantially diminish the habitat functions and values present.
3. It is the intent of the board that this chapter be administered with flexibility and attention to site-specific characteristics.

B. Applicability.

1. General. Review under the standards of this chapter shall apply to any proposed development or non-development clearing activities within designated habitat areas, defined in Section 40.440.010(C), which are not listed as exempt, pursuant to Table 40.440.010-1.
  - a. Development activities are those proposals already subject to existing county land division, building, grading or other review processes.
  - b. Non-development clearing activities are proposals which are not otherwise subject to county review, but involve the alteration or removal of vegetation in designated habitat areas.
2. Activities Adjacent to Certain Designated Habitat Areas. Proposed new single-family residential development occurring immediately outside but within three hundred (300) feet of designated priority species polygons or within one hundred (100) feet of designated non-riparian priority habitat polygons shall require consultation with ~~the Washington Department of Fish and Wildlife (WDFW)~~ WDFW prior to issuance of a development permit. In such cases, further review under this chapter is not required unless WDFW finds that there are potential adverse impacts. Agricultural activities adjacent to designated agricultural riparian areas are subject to Section 40.440.040(B). Other proposed land divisions and nonresidential development adjacent to designated wildlife sites shall be subject to SEPA as normally required by Chapter 40.570, and mitigative measures established if there are adverse impacts to the adjacent designated habitat areas.

1 3. Exempt Activities.

- 2 a. All proposed activities outside designated habitat areas are exempt from review under this  
3 chapter, except where noted in Section 40.440.010(B)(2) and 40.440.040(B).  
4 b. Within designated habitat areas exempt activities are listed in Section 40.440.010(D).  
5 These do not require review.  
6 c. All other ~~P~~proposed activities within habitat areas which are not consistent with an  
7 approved stewardship plan or subject to 40.440.040 shall be subject to the provisions of  
8 Section 40.440.040 ~~(D)~~.

9 C. Habitat Areas Covered by This Chapter.

- 10 1. Categories. This chapter shall apply to nonexempt activities as defined in Table 40.440.010-1  
11 that are proposed within the following habitat areas:

- 12 a. Riparian Priority Habitat. Areas extending outward on each side of the stream from the  
13 ordinary high water mark to the edge of the one hundred (100) year floodplain, or the  
14 following distances, if greater:

- 15 (1) DNR Type ~~1 and 2~~ S waters, two hundred fifty (250) feet;  
16 (2) DNR Type ~~3 F~~ waters, two hundred (200) feet;  
17 (3) DNR Type ~~4 Np and 5~~ waters, one hundred ~~fifty (150)~~ (100) feet.  
18 (4) DNR Type Ns waters, seventy five (75) feet.

19 Type 1 — 5 definitions based on WAC 222-16-031. Erosion gullies or rills, and streams  
20 which are manmade, less than six (6) inches wide or not having a defined bed and/or bank  
21 are not included. Water types are defined and mapped based on WAC 222-16-030. Type  
22 S streams include shorelines of the state and have flows averaging 20 or more cubic feet  
23 per second; Type F streams are those that are not Type S but still provide fish habitat; and  
24 type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns).  
25 All streams are those areas where surface waters flow sufficiently to produce a defined  
26 channel or bed as indicated by hydraulically sorted sediments or the removal of  
27 vegetative litter or loosely rooted vegetation by the action of moving water. Ns streams  
28 must connect to another stream above ground. Seasonal or intermittent streams are  
29 surface streams with no measurable flow during thirty consecutive days in a normal water  
30 year.

- 31 b. Other Priority Habitats and Species (PHS). Areas identified by and consistent with ~~the~~  
32 ~~Washington Department of Fish and Wildlife~~ WDFW priority habitats and species  
33 criteria, including areas within one thousand (1,000) feet of individual species point sites.  
34 The county shall defer to ~~the Washington Department of Fish and Wildlife~~ WDFW in  
35 regards to classification, mapping and interpretation of priority habitat species.  
36 c. Locally Important Habitats and Species. Areas legislatively designated and mapped by the  
37 county because of unusual or unique habitat warranting protection because of qualitative  
38 species diversity or habitat system health indicators. This subsection shall not apply to  
39 areas which have not been designated on official mapping. The criteria for mapping of  
40 these areas are that they possess unusual or unique habitat warranting protection because  
41 of qualitative species diversity or habitat system health indicators. Recommendations for  
42 mapping areas meeting these criteria may be submitted by any person or group, and shall  
43 be reviewed annually by the county in conjunction with the plan amendments docket

process as specified by Section 40.560.030. Notice of any such recommendations deemed to merit formal consideration shall be provided to impacted property owners pursuant to Section 40.510.030(E)(3). Such recommendations will not be reviewed as part of individual development requests.

2. Mapping.

a. The above habitat areas are mapped on a countywide basis in the adopted "Priority Habitats and Species Map." Maps are on file in the department and are available for public viewing and circulation. Further distribution of mapped information and notification to potentially impacted property owners will be completed as indicated in Sections 40.440.020(D)(1) and (E)(1).

b. Maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately. Under law, this information is not available for widespread public distribution unless authorized by the WDFW, Washington Department of Fish and Wildlife. However, property owners may obtain all existing information for their properties upon request.

c. Official maps shall be updated by the county as warranted by new information using the annual review process.

3. Best Available Science. Definitions and maps of habitat areas are based on best available science, as defined in WAC 365-195-905, and described in the following documents:

a. 1999 Washington Department of Fish and Wildlife Priority Habitats and Species List;

b. 1997 Management Recommendations for Washington's Priority Habitats;

c. The list of best available science references as maintained by the responsible official; and

ed. Associated GIS data files maintained by Clark County Department of Assessment and GIS.

Best available scientific data supporting this chapter may be updated and/or re-evaluated as part of future UDC Title 40 amendments.

4. Determining Site Specific Applicability. In the event of inconsistencies, official habitat area definitions shall prevail over countywide maps in determining applicability of this chapter. The county shall follow the recommendations of ~~the Washington Department of Fish and Wildlife~~ WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.

D. Activities Reviewed Under This Chapter.

This chapter applies to activities within designated priority and locally important habitat areas as described in Table 40.440.010-1.

Table 40.440.010-1. Exempt and Reviewed Activities		
Proposal	Is a clearing review required?	Are any additional fees or review timelines required?
Land division or lot reconfiguration entirely outside habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	No. Exempt	Fees pursuant to Chapter <u>6.430.110A</u> .
Land division or lot reconfiguration containing habitat areas, <u>except as subject to 40.440.010(B)(2)</u>	Exempt if impacted lots	Fees pursuant to Chapter <u>6.430.110A</u> . Adjustment to

Table 40.440.010-1. Exempt and Reviewed Activities		
	establish building and clearing envelopes outside of habitat	allow smaller lots necessary for critical lands protection can be provided without additional fees if consistent with overall zoning density as per Section 40.440.020 (C)(1)
Any activities on lots not in habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Any activities on portions of lots not containing habitat areas, <u>except as subject to 40.440.010 (B)(2)</u>	Exempt	None
Remodeling, or replacement or expansion, not to exceed <del>twenty five percent (25%)</del> of the 1997 footprint, of existing homes or existing accessory buildings inside habitat areas. <del>Home remodels, replacements or expansions of up to five hundred (500) square feet, or mobile home replacements of single wide with double wide models are also exempt</del>	Exempt	None
<del>Farming, forestry or vegetation removal activities inside existing yards, areas of existing agricultural use, or existing cultivated portion of habitat areas</del> <u>Maintenance of existing yards and landscaping in habitat areas</u>	Exempt	None
<del>Clearing authorized by forest practices applications other than conversions in habitat areas. Forest practices in habitat areas that are regulated by the Washington Department of Natural Resources under the Forest Practices Rules or regulated under Clark County Code Section 40.260.080, Forest Practices, except conversions</del>	Exempt	None
<u>Existing agricultural uses within non-riparian habitat areas</u>	<u>Exempt</u>	<u>None</u>
<u>Existing agricultural uses with riparian habitat areas, expansions, and new agricultural uses</u>	<u>Review Required</u>	<u>None, except for new agricultural uses in non-resource areas</u>
Emergency clearing to abate immediate danger to persons or property, <u>For emergency clearing of hazard trees, remove only that portion of a hazard tree as is minimally necessary to remediate the hazard. Cut wood should be left in the habitat area</u>	Exempt	None
<u>Clearing necessary for the emergency repair of utility or public facilities, provided that notification of emergency work that causes substantial degradation to functions and values is reported in a timely manner.</u>	<u>Exempt</u>	<u>None</u>

<b>Table 40.440.010-1. Exempt and Reviewed Activities</b>		
<u>Clearing for operation, maintenance or repair of existing utilities or public facilities that does not further increase the impact to, or encroach further within the habitat area</u>	<u>Exempt</u>	<u>None</u>
<u>Fire hazard clearing recommended by fire marshal, or consistent with written fire marshal or fire chief guidelines in habitat areas</u>	<u>Exempt</u>	<u>None</u>
Clearing of defined nuisance vegetation in habitat areas which utilize methods that minimize disturbance of soils and non-nuisance vegetation. <u>Replanting with native vegetation should be pursued to prevent re-infestation</u>	Exempt	None
Clearing as minimally necessary for placement of fencing, private wells, septic systems or individual lot sewer, water, electrical or utility connections in habitat areas, where practical alternatives do not exist	Exempt	None
Clearing as minimally necessary for stream bank restoration, for native replanting or enhancements in habitat areas	Exempt	None
Clearing as minimally necessary for routine road maintenance activities in habitat areas consistent with Regional Road Maintenance ESA Program Guidelines	Exempt	None
Clearing as minimally necessary for soil, water, vegetation or resource conservation projects having received an environmental permit from a public agency in habitat areas	Exempt	None
Clearing as minimally necessary for creating a 4-foot or narrower path using natural, wood-based, or <u>gravel vegetated pervious</u> surfacing in habitat areas	Exempt	None
Clearing as minimally necessary for surveying or testing in habitat areas	Exempt	None
Clearing or development in riparian habitat areas which is at least one hundred (100) feet from the waterline and separated by a continuous public or private roadway serving three (3) or more lots	Exempt	None
Non-development clearing activities in habitat areas consistent with a recorded stewardship plan for which any mitigation specified in the plan is timely completed	Exempt	None
New home or other construction in habitat areas	Review required	No additional timelines. Applicable review (building permit, etc.) must comply with ordinance standards.

Table 40.440.010-1. Exempt and Reviewed Activities		
		Fees pursuant to Title 6
All other vegetation clearing in habitat areas	Review required	Fees pursuant to Title 6. Applicable review, if any, must comply with ordinance standards. If no other review involved, clearing request will be reviewed administratively

## 40.440.020 STANDARDS AND NONREGULATORY MEASURES

### A. Approval Criteria.

Approval shall be granted for all proposals demonstrating compliance with the following criteria. Approval shall be required prior to clearing or development.

1. Intent. Designated habitats are to be protected through avoidance or reduction of ~~most the~~ impacts of activities. This section provides standards for the review of proposed nonexempt activities within designated habitat areas.

2. Basic Criteria. Applicants proposing activities subject to this chapter shall demonstrate that the activity:

- Substantially maintains the level of habitat functions and values as characterized and documented using best available science; and
- Minimizes habitat disruption or alteration beyond the extent required to undertake the proposal.

### 3. Mitigation Measures.

a. Mitigation measures may be established pursuant to the above basic criteria.

b. Disrupted functions and values shall be mitigated on-site as a first priority, and off-site thereafter.

c. An up-to-date science-based guide such as the "Clark County Guide to Best Management Practices for Permitted Development in Habitat Areas" should be used to guide on-site mitigation. Off-site mitigation should be guided by applicable watershed, fish recovery, sub-basin or other science-based plans. Any science used to guide mitigation actions, whether on-site or off-site must meet the criteria and characteristics of best available science listed in WAC 365-195-905 or the state standards in effect at the time of application.

d. Subject to individual circumstances, potential mitigation measures may include, but are not limited to the following:

- ~~a.(1)~~ Avoiding the impact all together by not taking a certain action or parts of an action;
- ~~b.(2)~~ Exploring alternative on-site locations to avoid or reduce impacts of activities;
- ~~c.(3)~~ Preserving important vegetation and natural habitat features by est ablishing buffers or by limiting clearing or alteration;
- (4) Replacing invasive exotic plants with native species (refer to the Clark County Native Plant Communities Guide or other relevant publication for guidance);

- 1 (5) Prohibiting introduction of invasive plant species in habitat areas;
- 2 ~~d~~ (6) Enhancing, restoring or replacing vegetation or other habitat features and functions.
- 3 In riparian areas, this may include ~~buffer~~ riparian zone averaging as specified in
- 4 Section 40.440.020(C)(3);
- 5 (7) Using native plants where appropriate when planting within habitat areas (refer to
- 6 the Clark County Native Plant Communities Guide or other relevant publication for
- 7 guidance);
- 8 ~~e~~ (8) Managing access to habitat areas, including exclusionary fencing for livestock if
- 9 needed;
- 10 (9) Stream crossings;
- 11 (a) Using existing stream crossings whenever a review of suitability, capacity,
- 12 access and location, habitat impacts of alternatives, maintenance, liability and
- 13 economics indicates the existing crossing is feasible;
- 14 (b) Constructing new stream crossings, when necessary, in conformance to the Water
- 15 Crossing Structure Standards in WAC 220-140-070, which are incorporated by
- 16 reference;
- 17 ~~f~~ (10) Seasonally restricting or construction activities;
- 18 ~~g~~ (11) Implementing best management practices and integrated management practices;
- 19 ~~h~~ (12) Monitoring or review of impacts and assurance of stabilization of the area;
- 20 ~~i~~ (13) Establishing performance measures or bonding;
- 21 ~~j~~ (14) Establishing conservation covenants and other mechanisms to insure long-term
- 22 preservation or maintenance of mitigation actions;
- 23 (15) Utilizing low impact development techniques;
- 24 (16) Promoting water quality by limiting the use of lawn and garden chemicals in habitat
- 25 areas; and/or
- 26 (17) Avoiding topsoil removal and minimizing topsoil compaction.
- 27 ~~k~~ (18) Compensating for on-site impacts through off-site mitigation only when inside the
- 28 unincorporated area, as close as practicable to the site, and when all reasonable on-
- 29 site mitigation alternatives have been exhausted. Off-site mitigation shall be
- 30 functionally equivalent, be reviewed on a case-by-case basis in consultation with
- 31 the Washington Department of Fish and Wildlife, and shall delegate adequate
- 32 enforcement authority to the county, as approved by the Prosecuting Attorney's
- 33 Office. For riparian habitat, off-site mitigation must also be located within the same
- 34 watershed. Public regional development activities reviewed and approved by
- 35 federal or state agencies shall be exempt from the geographic restrictions of this
- 36 subsection. Providing off-site mitigation, subject to the following conditions:
- 37 (a) When the combination of on-site and off-site mitigation fails to substantially
- 38 maintain functions and values within the stream system, the application shall be
- 39 denied;
- 40 (b) All reasonable on-site mitigation alternatives have been exhausted;
- 41 (c) Off-site mitigation is functionally equivalent to the impacts;

- 1 (d) Off-site mitigation is appropriate in size and scale to the impacts that are not  
2 fully mitigated on the original site;
- 3 (e) Proposed off-site mitigation is reviewed by the county on a case-by-case basis  
4 with input from WDFW;
- 5 (f) Off-site mitigation may be in the form of:
- 6 i. The purchase of credits from a permitted habitat bank, or  
7 ii. A voluntary contribution to the established Cumulative Effects Fund for the  
8 watershed within which the project is located, or
- 9 iii. A specific mitigation project:
- 10 [a] Specific off-site mitigation projects for riparian habitat areas must be  
11 located within the same watershed as the original site.
- 12 [b] Specific off-site mitigation projects for all other habitat areas must be in  
13 an unincorporated area as close as possible to the original site.
- 14 [c] Public regional development activities that are reviewed and approved by  
15 federal and state agencies are exempt from these geographic restrictions;
- 16 (g) Adequate enforcement authority must be delegated to the county, as  
17 approved by the Prosecuting Attorney;
- 18 4. The responsible official shall approve, approve with conditions or deny proposals based on  
19 compliance with the criteria and the adequacy of proposed mitigation measures to ensure  
20 compliance, and applicable reasonable use assurances of Section 40.440.020(B).
- 21 5. The responsible official shall retain final authority for such determinations, which shall be  
22 issued consistent with the review timelines of Chapter 40.510, and shall be based on best  
23 scientific information and analysis available within those timelines.
- 24 6. The responsible official shall consult with and substantially follow the resulting  
25 recommendations of the Washington Department of Fish and Wildlife WDFW, unless  
26 alternative determinations are supported by scientific analysis.
- 27 B. Reasonable Use Assurances. The following assurances shall apply in implementing the standards  
28 of this chapter: The county assures property owners of the following, as long as impacts are  
29 mitigated to the maximum extent practicable, permit conditions limiting locations and requiring  
30 mitigations may be imposed, and erosion control measures required:
- 31 1. The standards of this chapter shall not be used to preclude the placement of a single family  
32 residence on an otherwise legally buildable lot of record. Standards may be applied on  
33 established properties to limit the proposed location of structures and proposed removal of  
34 vegetation. This chapter shall not be used to prohibit:
- 35 a. Placement of a single-family residence on an otherwise legally buildable lot of record;  
36 b. Expansion of a home existing prior to 1997, not to exceed 25% of the 1997 footprint;  
37 c. Replacement of a single-wide mobile home with another dwelling, not to exceed twice the  
38 footprint of the original mobile home; or
- 39 d. Fire hazard clearing recommended by the fire marshal, or consistent with written fire  
40 marshal or fire chief guidelines.



- 1       2. This chapter shall not be used to deny all reasonable economic use of private property. These  
2       criteria must be met in order to verify denial of all reasonable economic use:
- 3       a. The application of this chapter would deny all reasonable economic use of the property;  
4       b. No other reasonable economic use of the property has less impact on the habitat area;  
5       c. Any habitat alteration is the minimum necessary to allow for reasonable economic use of  
6       the property; and  
7       d. The inability of the applicant to derive reasonable economic use of the property is not the  
8       result of actions by the applicant after May 30, 1997.
- 9       3. ~~The standards of~~ This chapter shall not be used to deny or reduce the number of lots of a  
10      proposed rural land division allowed under applicable zoning density.
- 11      4. This chapter shall not be used to deny a development proposal from a public agency or public  
12      utility, if:
- 13      a. There is no practical alternative to the proposed project with less impact on the habitat  
14      area;  
15      b. The ability of the public agency or utility to provide services to the public would be  
16      unreasonably restricted; and  
17      c. The application is approved through a Type III process pursuant to Section 40.510.030.  
18      Fees are subject to the Type III Variance fee schedule in Chapter 6.110A.010.
- 19      C. The following regulatory alternatives or incentives shall apply in implementing the standards of  
20      this chapter:
- 21      1. Proposed land divisions involving critical areas may transfer density as follows:
- 22          a. Rural area land divisions may utilize the cluster provisions of 40.210.020(D).
- 23          b. Urban area land divisions may utilize density transfer provisions of Section  
24          40.220.010(C)(5).
- 25      2. Existing abutting nonconforming lots under common ownership may be reconfigured under  
26      the standards of Section 40.210.010(D).
- 27      3. Required riparian zone widths on clearing proposals on existing lots may be varied through  
28      the use of internal riparian zone averaging. Subject to review under this chapter, for clearing  
29      proposals on existing lots, portions of the riparian zone can be reduced up to fifty percent  
30      (50%) from the normal standards of this chapter if riparian zone widths are correspondingly  
31      increased elsewhere within the applicant parcel, such that the overall size and function and  
32      values of the riparian zone are maintained in the parcel. Riparian zone averaging proposals  
33      must clearly identify the existing riparian functions and values on the parcel and any impacts  
34      that the proposed averaging may have upon them.
- 35      4. In evaluating forest practice conversion applications under this chapter, the county may allow  
36      for modest levels of short-term degradation of habitat function if it is offset by long-term  
37      benefits provided by a conservation covenant or other permanent protective measure. Such  
38      allowances shall only be made following the recommendation of ~~the Washington Department~~  
39      of Fish and Wildlife WDFW.
- 40      D. Individual Stewardship Plans.

- 1 1. To encourage educational and voluntary conservation measures, the county shall notify  
2 property owners potentially impacted by wildlife habitat area regulations, and shall assist any  
3 owners interested in developing individual stewardship plans which will establish parameters  
4 and guidelines for future on-site activities in designated habitat areas. In addition, property  
5 owners may consult with WDFW and other agencies or private groups or individuals to  
6 develop the scientific information for their stewardship plans.
- 7 2. The county shall provide information on best management practices and other educational  
8 and explanatory materials to property owners. The county shall coordinate with ~~the~~  
9 ~~Washington Department of Fish and Wildlife~~ WDFW, and other agencies or private groups  
10 with expertise in wildlife or land management in the development and distribution of these  
11 materials.
- 12 3. The county shall work cooperatively with interested property owners to establish and record a  
13 notice of stewardship plan. Stewardship plans should at a minimum include the following:  
14 a. Mapping of existing structures, roads, driveways and known utilities, and property lines;  
15 b. Mapping of existing designated habitat areas, water bodies, known wetlands, vegetation  
16 and wildlife types, and yards or cultivated areas;  
17 c. Identification of functions and values associated with the habitat areas, water bodies,  
18 wetlands and vegetation and wildlife.  
19 d. Mapping and written description of future activities on the site including time frame; and  
20 e. Mapping and description of the protective and mitigative measures, if any, for the  
21 identified functions and values to be undertaken as part of plan.
- 22 4. Notice of stewardship plans shall be recorded and shall run with the land unless and until a  
23 request for revocation or modification has been submitted by the property owner and  
24 approved by the county. The county shall approve all such requests unless there are any  
25 uncompleted mitigation measures which were agreed to in the stewardship plan as necessary  
26 to compensate for clearing of habitat areas undertaken pursuant to the plan. Revocation may  
27 trigger the tax penalties associated with withdrawal from an open space taxation program, if  
28 applicable.
- 29 5. Property owners with approved stewardship plans are exempt from regulation under this  
30 chapter for non-development proposals which are consistent with the stewardship plan and do  
31 not otherwise require county building, grading, or other review.
- 32 6. Stewardship plans shall be approved under criteria in Section 40.440.020(A).
- 33 7. Appeals may be filed under the provisions of Chapter 40.510.
- 34 E. Nonregulatory Implementation Measures.
- 35 As part of the implementation of this chapter and related efforts towards wildlife conservation,  
36 the county will undertake the following additional nonregulatory measures:
- 37 1. Education and Outreach Measures.
- 38 a. Notify property owners within critical areas;
- 39 b. Develop clear and understandable manuals explaining recommended best management  
40 practices for typical rural and urban land owner activities;
- 41 c. Provide seminars and presentations for interested owners and groups;

- 1 d. Coordinate efforts with existing conservation, stewardship or small resource user groups  
2 with expertise in wildlife or habitat area land management issues;
- 3 e. Expand local wildlife inventory information through baseline survey of local habitats and  
4 species;
- 5 f. Provide cooperative outreach to individual property owners in critical areas who wish to  
6 develop stewardship plans to establish parameters for future activities involving clearing  
7 on their property.
- 8 2. Incentive Measures.
- 9 a. Create and/or expand incentives through the current use taxation program;
- 10 b. Develop and/or expand land acquisition programs;
- 11 c. Develop non-monetary incentives for project proponents to exceed mitigation  
12 requirements.
- 13 E. Specific Activities.
- 14 Special procedures and standards apply to certain specific activities as provided for in Section  
15 40.440.040.
- 16 G. Habitat Banking. (reserved)
- 17
- 18 **40.440.030 ADMINISTRATION**
- 19 A. Coordination with Other Permits.
- 20 Development proposals requiring review under this chapter which involve other county permits  
21 shall be reviewed under the timelines of the existing review without additional cost; provided,  
22 that application information required under this chapter (Section 40.440.030(C)) is submitted and  
23 approval criteria (Section 40.440.020(A)) are addressed.
- 24 B. Non-Development Proposals.
- 25 Non-development proposals not involving any other county application development reviews  
26 shall be reviewed as a Type I ministerial application under the timelines and procedural standards  
27 of Section 40.510.010. Section 40.440.030(C) indicates application information to be submitted.
- 28 C. Submittal Information.
- 29 1. Applications for Proposed nonexempt activities requiring review under this chapter shall be  
30 submitted with applications as follows: the following:
- 31 a. Development applications involving other county review shall submit application  
32 materials according to specifications of other reviews involved, and shall also include a  
33 completed proposed habitat activity form.
- 34 b. Non-development applications not involving other county review shall be submitted with  
35 a completed proposed habitat activity form.
- 36 2. Where required by state law, a completed environmental checklist pursuant to the State  
37 Environmental Policy Act (SEPA) shall also be submitted unless categorically exempted by  
38 the SEPA Rules.

- 1 3. The county shall develop and make available proposed habitat activity forms. These forms  
2 shall clearly and concisely provide direction to applicants on what information is needed in  
3 the following areas:
- 4 a. Name, address, location, and basic tracking information for the application;  
5 b. Existing conditions information, natural and manmade features on the site;  
6 c. Description and mapping of proposed activities and how this would change existing  
7 conditions on the site.
- 8 4. Proposals under this chapter are encouraged but not required to include a report or other  
9 assistance from a biologist, botanist, ecologist, or other similarly qualified or trained  
10 professional.
- 11 5. Persons interested in establishing an individual stewardship plan for future activities as  
12 specified in Section 40.440.020(D) should contact the department.
- 13 D. Permit Authority and Timelines.
- 14 1. An approval granted under this chapter shall remain valid until proposed activities are  
15 undertaken and completed. An approved permit not acted upon shall be valid for two (2)  
16 years, and upon showing of good cause, may be extended for an additional twelve (12)  
17 months.
- 18 2. Approval for habitat area activities as part of other county development approvals shall be  
19 valid for a time period specified by the other permit(s) involved.
- 20 3. Approved stewardship plans shall remain valid as specified in Section 40.440.020(D).
- 21 E. Appeals.
- 22 Appeals of county decisions under this chapter may be filed under the provisions of Chapter  
23 40.510.
- 24 F. Enforcement.
- 25 At such time as a violation of this chapter has been determined, enforcement action shall be  
26 commenced in accordance with the enforcement provisions of Title 32 of this code, and may also  
27 include the following:
- 28 1. Applications for county land use permits on sites that have been found to be in violation of  
29 this chapter pursuant to the process set forth in Title 32 of this code shall not be processed  
30 until three (3) years after the completion of clearings, provided, that if the three (3) years may  
31 be reduced upon approval and implementation of a restoration or mitigation plan, to include  
32 the following:
- 33 a. A plan for the replanting of trees, brush and groundcover of a type and distribution  
34 comparable to that existing prior to clearing; provided, that the responsible official may  
35 approve alternative species in order to promote expedient soil stabilization, and may  
36 require additional tree planting as mitigation for the loss of mature trees; and
- 37 b. A monitoring plan to assure at least a ninety percent (90%) survival rate of re-established  
38 plantings after at least three (3) but not more than eight (8) growing seasons; and
- 39 c. Where fish and wildlife habitat areas are cleared in violation of this chapter, a plan to  
40 restore habitat functionality, as it existed prior to the violation, subject to the review and  
41 evaluation of the Washington Department of Fish and Wildlife WDFW.

1 d. Satisfaction of the terms and conditions of any judgement or order entered based upon the  
2 violation.

3 e. Financial assurances in the form of a bond or other security acceptable to the county, in  
4 an amount sufficient to re-establish the mitigation in the event of failure or subsequent  
5 disturbance may be required by the responsible official. The financial assurances shall  
6 remain in place for the length of the time specified for monitoring in the plan and shall be  
7 released after a request by the applicant and a final inspection. In the event of failure of  
8 the mitigation, failure to fully execute the mitigation plan, or subsequent disturbance,  
9 forfeiture of the financial assurances shall be required and the funds shall be used to re-  
10 establish the mitigation or to complete the execution of the plan. In the event that such  
11 re-establishment or completion is deemed impractical by the director, the funds shall  
12 accrue to the established Cumulative Effects Fund for the watershed within which the site  
13 is located.

- 14 2. In the absence of any mitigation measures approved by the department for sites cleared in  
15 violation of this standard, the county may refuse to approve any permit for up to an additional  
16 three (3) years.

17 G. Specific Activities.

18 Special procedures and standards apply to certain specific activities as provided for in  
19 Section 40.440.040.

20  
21  
22 **40.440.040 SPECIFIC ACTIVITIES**

23 The following specific activities are subject to special procedures and standards as set forth below.

24 A. Routine Utility and Public Facility Maintenance and Operations.

25 The responsible official may issue programmatic permits for routine maintenance and operations  
26 of utilities and public facilities. The programmatic permit process shall not deny or unreasonably  
27 restrict a utility's or public agency's ability to provide services to the public. Programmatic  
28 permits only authorize activities specifically identified in the permit approval.

29 1. Application submittal requirements. Unless waived by the responsible official with specific  
30 findings in the approval document, applications for programmatic habitat permits shall  
31 include a programmatic permit plan that includes the following:

32 a. A discussion of the purpose and need for the permit;

33 b. A description of the scope of activities in habitat areas;

34 c. Identification of the geographical area to be covered by the permit;

35 d. The range of functions and values within designated habitat areas covered by the permit;

36 e. Specific measures and performance standards to be taken to avoid, minimize and mitigate  
37 impacts on the functions and values;

38 (1) Procedures for identification of designated habitat areas;

39 (2) Maintenance practices proposed to be used;

40 (3) Restoration measures;

- 1 (4) Mitigation measures and assurances;  
2 (5) Annual reporting to the responsible official that documents compliance with permit  
3 conditions and proposes any additional measures or adjustments to the approved  
4 programmatic permit plan;  
5 (6) Reporting to the responsible official any specific habitat degradations resulting from  
6 maintenance activities when the degradation occurs or within a timely manner;  
7 (7) Responding to any department requests for information about specific work or  
8 projects;  
9 (8) Procedures for reporting and/or addressing activities outside the scope of the  
10 approved permit;  
11 (9) Training all employees, contractors and individuals under the supervision of the  
12 applicant who are involved in permitted work.

13 2. Permit Review.

- 14 a. Programmatic permit applications that are exempt from SEPA are subject to type I  
15 review.  
16 b. Programmatic permit applications that are not exempt from SEPA are subject to type II  
17 review.  
18 c. Programmatic permit applications under type II review shall not be subject to the  
19 distribution requirements of CCC 40.510.020(E)(2)(a)(3). Within fourteen (14) calendar  
20 days after the date an application is accepted as fully complete, the county shall publish  
21 in a newspaper of general circulation a summary of the notice, including the date, time  
22 and manner of making comments, the nature and location of the proposal and instructions  
23 for obtaining further information.

24 3. Findings and Approval.

- 25 a. A decision approving, denying or reauthorizing a programmatic permit shall be supported  
26 by findings of fact relating to the standards and requirements of this chapter.  
27 b. An approved programmatic permit must, at a minimum, include:  
28 (1) A programmatic permit plan; and  
29 (2) A provision stating the duration of the permit.

30 4. Duration and Reauthorization.

- 31 a. The duration of a programmatic permit is for five years unless:  
32 (1) An annual performance based reauthorization program is approved within the permit,  
33 or;  
34 (2) A shorter duration is supported by findings.  
35 b. Requests for reauthorization of a programmatic permit must be received prior to the  
36 expiration of the original permit.  
37 (1) Reauthorization is reviewed and approved through the process described in  
38 subsection (A)(1-3).  
39 (2) Permit conditions and performance standards may be modified through the  
40 reauthorization process.

1 (3) The responsible official may temporarily extend the original permit if the review of  
2 the reauthorization request extends beyond the expiration date.

3 B. Agricultural Uses, including Animal Husbandry.

4 1. Applicability.

5 a. Non-riparian habitat

6 (1) Agricultural activities in existence on [the date of ordinance adoption] within  
7 designated non-riparian habitat areas are presumed not to cause substantial  
8 degradation of existing habitat functions and values and are, therefore, exempt from  
9 regulation under this chapter.

10 (2) The conversion of designated non-riparian habitat areas to agricultural use  
11 subsequent to [the date of ordinance adoption] shall be subject to the non-  
12 development clearing rules of this chapter.

13 b. Riparian habitat

14 (1) Agricultural activities in existence on [the date of ordinance adoption] within  
15 designated riparian habitat areas, and the expansion thereof onto adjacent lands not to  
16 exceed twenty-five percent (25%) of the footprint of the existing agricultural use  
17 (management plan option only), shall be subject to the agricultural module provided  
18 below.

19 (2) The conversion of designated riparian habitat areas to agricultural use, other than an  
20 expansion allowed for in subsection (b)(1) above, subsequent to [the date of  
21 ordinance adoption] shall be subject to:

22 (a) The management plan option (Section 40.440.040(B)(2)(a)), if undertaken on  
23 lands zoned agriculture, forest, or ag-wildlife.

24 (b) The non-development clearing rules of this chapter if undertaken on lands not  
25 zoned agriculture, forest, or ag-wildlife.

26 2. Agricultural module. Where applicable, the following options are available to be used for  
27 compliance with this section.

28 a. Management plan option.

29 (1) Regulated area. For the purposes of a management plan, the regulated riparian area  
30 shall be [100/250] feet from the ordinary high water mark of Type S streams,  
31 [100/200] feet from the ordinary high water mark of Type F streams, [75/100] feet  
32 from the ordinary high water mark of Type Np streams, and 75 feet from the ordinary  
33 high water mark of Type Ns streams. The management plan may include practices  
34 and other mitigation measures on land outside the regulated riparian area to achieve  
35 the standard set forth in subsection (2) below.

36 (2) Standard. An agricultural management plan shall be approved if its implementation  
37 will not substantially degrade habitat functions and values that existed within the area  
38 designated in subsection (1) above on [the date of ordinance adoption]. An  
39 agricultural management plan may be submitted by a group of neighborhood owners  
40 whose properties are in close proximity in which case the foregoing standard shall be  
41 applied to the common plan.

42 (3) Plan contents. Agricultural management plans shall, at a minimum, include the  
43 following:

- 1 (a) An approximate mapping of existing and proposed structures, roads, driveways,  
2 utilities, property lines, and agricultural uses.
- 3 (b) A map of regulated riparian habitat areas.
- 4 (c) Identification of existing habitat functions and values within the regulated habitat  
5 area.
- 6 (d) A description of best management practices and other mitigation measures to be  
7 undertaken in order to achieve the standard in subsection a(2) above.
- 8 (e) The owner's signature attesting that the information in the plan is accurate to the  
9 best of the owner's knowledge, and the mitigation measures specified in the plan  
10 will be implemented.
- 11 (f) The signature of an ag-habitat technician certified by the county attesting that the  
12 plan satisfies the standard in subsection a(2) above.
- 13 (4) Guidelines. The responsible official shall work with a committee appointed by the  
14 board to include interest group representatives and habitat professionals to develop  
15 and, after consultation with the board, promulgate a set of guidelines which:
- 16 (a) includes a checklist to identify riparian habitat functions and values;  
17 (b) identifies potential negative habitat affects of various agricultural activities; and  
18 (c) describes practices and other mitigation measures to mitigate or  
19 minimize those effects.
- 20 The guidelines shall provide that pesticide use within riparian areas must be  
21 described in the management plan and conform to label instructions.
- 22 (5) Approval. Management plans shall be approved by an ag-habitat technician certified  
23 by the responsible official to have completed a training program on application of the  
24 guidelines. An owner dissatisfied with the review by an ag-habitat technician may  
25 seek approval of the proposed management plan by the responsible official whose  
26 Type I decision may be appealed under the provisions of Chapter 40.510.
- 27 (6) Filing. An approved management plan shall be filed with the responsible official.  
28 Notice of such approval shall also be recorded with the Clark County Auditor and run  
29 with the land unless the management plan is modified or rescinded.
- 30 (7) Modification/rescission. Management plans may be modified by the owner at any  
31 time utilizing the same process as applicable to initial approval. Management plans  
32 may be rescinded by the owner with approval of the responsible official if the owner  
33 certifies either that future agricultural activities will be undertaken utilizing the  
34 default option or agricultural activities have ceased. Notice of  
35 modification/rescission shall be recorded with the Clark County Auditor.
- 36 b. Default option.
- 37 (1) Regulated area. For the purposes of the default option, the regulated riparian area is  
38 divided into two zones. Except as provided below the inner zone, closest to the  
39 stream, extends from the ordinary high water mark outward fifty (50) feet on Types S  
40 and F streams and thirty (30) feet on Type N streams. The outer zone extends an  
41 additional fifty (50) feet on Types S and F streams and forty-five (45) feet on Type N  
42 streams. Where slopes exceed twenty-five percent (25%), the inner zone is the  
43 greater of the prescribed zone or the top of the slope break. Where wetlands are  
44 present within the inner zone, the zone is extended to the greater of the prescribed



- 1 width of the inner zone or the wetland buffer as designated in Chapter 40.450.  
2 However, in no case is the inner zone greater than the combined widths prescribed  
3 for in the inner and outer zones for that stream type. Where there is an existing road  
4 within the inner zone, the zone stops at the edge of the road improvement that is  
5 closest to the stream and the outer zone extends outward from that edge.
- 6 (2) Standard. Clearing within the inner zone is allowed only to enhance habitat functions  
7 and values. Animal husbandry within the inner zone is prohibited. Clearing and  
8 animal husbandry within the outer zone shall not substantially degrade habitat  
9 functions and values. Although it is presumed that continuation of agricultural  
10 activities within the outer zone that existed on [the date of ordinance adoption] will  
11 not substantially degrade existing habitat functions and values, evidence of  
12 degradation, such as excess sediment, nutrients or chemicals moving from the outer  
13 zone into the stream constitute grounds for enforcement action. Pesticide application  
14 within the outer zone must conform to label specifications and application within the  
15 inner zone must be by a licensed applicator.
- 16 (3) Reasonable use. If the inner zone impacts more than fifty percent (50%) of a parcel  
17 that is ten (10) acres or less in area, or more than twenty-five percent (25%) of a  
18 parcel that is five (5) acres or less in area, the responsible official may approve a  
19 reasonable use reduction to the width of the inner zone. In such case, clearing and  
20 animal husbandry may be allowed up to ten (10) feet from the ordinary high water  
21 mark provided that reasonable practices and other appropriate mitigation measures  
22 are employed to limit sediment, nutrients and chemicals from entering the stream.
- 23 3. Administration.
- 24 a. No application fees apply to the approval of management plans.
- 25 b. No county review is associated with the default option unless the owner seeks approval of  
26 a reasonable use reduction of the inner zone, which application shall be processed  
27 without application fees.
- 28 c. Violation of an approved management plan, violation of the default option requirements,  
29 or evidence of substantial degradation of habitat functions and values shall be grounds for  
30 enforcement action under the provisions of Title 32.